

S U P R E M E C O U R T O F I N D I A  
 RECORD OF PROCEEDINGS  
 CIVIL APPEAL NO(s). 5470 OF 1999

M/S.ECONOMICS TPT.ORGANISATION Appellant (s)

VERSUS

M/S.ORIENTAL INSURANCE CO.LTD.&ANR Respondent(s)

(With prayer for interim relief and office report )

Civil Appeal NO. 1820 of 2010  
 (With prayer for interim relief and office report)  
 Civil Appeal NO. 1822 of 2010  
 (With appln. For c/delay and with prayer for interim relief and office report)  
 Civil Appeal NO. 3633 of 2002  
 (With office report)  
 Civil Appeal NO. 6689 of 2002  
 (With office report)  
 Civil Appeal NO. 7874 of 2002  
 (With office report)  
 Civil Appeal NO. 7086 of 2002  
 (With office report)  
 Civil Appeal NO. 4062 of 2006  
 (With office report)  
 Civil Appeal NO. 4509 of 2006  
 (With office report)  
 Civil Appeal NO. 1824 of 2010  
 (With prayer for interim relief and office report)  
 Civil Appeal NO. 1827 of 2010  
 (With prayer for interim relief and office report)  
 WITH Civil Appeal NO. 1711 of 2007  
 (With office report)  
 Civil Appeal NO. 1712 of 2007  
 (With office report)  
 Civil Appeal NO. 1826 of 2010  
 (With prayer for interim relief)  
 Civil Appeal NO. 1922 of 2008  
 (With prayer for interim relief and office report)

Date: 23/03/2010 This Appeal was called on for hearing today.

-2-

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN  
 HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) in CA 1822/2010	Mr.Joy Basu,Adv. Mr.Madhurendra Kumar,Adv. Mr. B.K.Satiya
CA No. 4062/2006	Mr.S.L. Gupta,Adv. Mr.Ram Ashray,Adv. Mr. Goodwill Indeevar, Adv.
CA No.1820/2010	Mr. M.K. Dua, Adv. Mr.Kishore Rawat,Adv. Mr.Dhiraj,Adv.

Mr. M.M. Kashyap, Adv. (NP)

CA No.1824/2010 Dr. Meera Agarwal, Adv.  
Mr. Ramesh Chandra Mishra, Adv.

Mr. Debasis Misra, Adv.  
Mr. Anil Kumar Jha, Adv.

CA No.4509/2006 Mr. Anil Nauriya, Adv.  
Ms. Sumita Hazarika, Adv.  
Ms. S.S. Minz, Adv.

For Respondent(s)  
in CA Nos.1822/10  
& 1711/07 Mr. Jay Savla, Adv  
Ms. Meenakshi Ogra, Adv.  
Ms. Arundhati Das, Adv.

CA No.1827/2010 Mr. K.K. Tyagi, Adv.  
Mr. Iftexhar Ahmad, Adv.  
Mr. P. Narasimhan, Adv.

CA No.7874/2002 Mr. Vikramjit Banerjee, Adv.  
Mr. Rishi Maheshwari, Adv.  
Mrs. Shally Bhasin Maheshwari, Adv.  
Ms. Barsha Misra, Adv.

-3-

Mr. R.D. Upadhyay, Adv.

Mr. M.K. Dua, Adv.,

Mr. Debasis Misra, Adv.,

Dr. Kailash Chand, Adv.  
Mr. Sanjay Garg, Adv.

UPON hearing counsel the Court made the following  
O R D E R

C.A. Nos. 5470/1999 & CA 1820/2010

No one appears for the appellant, the appeals are dismissed  
in default in terms of the signed orders.

C.A.No.4509/2006

The appeal is dismissed in terms of the signed order.

C.A.Nos.1822/2010, 3633/2002, 6689/2002, 7874/2002, 7086/2002,  
4062/2006, 1824/2010, 1827/2010, 1711/2007, 1712/2007, 1826/2010,  
1922/2008

Delay condoned in CA No.1822/2010.

The appeals are allowed in terms of the signed orders.

(KUSUM SYAL)  
SR.P.A

(PUSHP LATA BHARDWAJ)  
COURT MASTER

(Signed Orders are placed on the file)  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5470 OF 1999

M/s Economic Transport Organisation Appellants

VERSUS

M/s Oriental Insurance Company Limited & Anr. Respondent

ORDER

No one appears for the appellant, the appeal is dismissed in default.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1711 OF 2007

National Insurance Co. Ltd. & Anr. Appellants

VERSUS

M/s Vora Transport Services & Anr. Respondent

ORDER

This appeal, by special leave, is directed against the order dated 22nd November, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.426 of 1999.

By the impugned order, the National Commission has allowed the appeal filed by the Vora Transport Services and Vora Roadways Pvt. Ltd. - respondents in this Appeal, against the order passed by the Maharashtra State Consumer Disputes Redressal Commission, inter-alia, directing respondents to pay compensation for non-delivery of the consignment to the Insurer.

Following the ratio of the decision of this Court in

Oberai Forwarding Agency Vs. New India Assurance Co.

Ltd. & Anr.1, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation

Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.<sup>1</sup>, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order

as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1712 OF 2007

National Insurance  
Co. Ltd. & Anr.

Appellants

VERSUS

M/s Associated Road  
Carriers Ltd.

Respondent

ORDER

This appeal, by special leave, is directed against the order dated 22nd November, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.125 of 1998.

By the impugned order, the National Commission has allowed the appeal filed by Associated Road Carriers Ltd. -Respondent in this Appeal, against the order passed by the Maharashtra State Consumer Disputes Redressal Commission, inter-alia, directing respondent to pay compensation for non-delivery of the consignment to the Insurer. Following the ratio of the decision of

this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has

come to the conclusion that the complaint filed by the

Insurer, as co-complainant with the assured was not

maintainable, resulting in dismissal of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P)

1 (2000) 2 SCC 407

Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as

it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

1 JT 2010 (2) SC 271

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1820 OF 2010

M/s Economic Transport  
Organisation & Anr.

Appellants

VERSUS

National Insurance  
Company & Anr.

Respondents

ORDER

No one appears for the appellant, the appeal is  
dismissed in default.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1822 OF 2010

National Insurance  
Company Ltd.

Appellant

VERSUS

Calcutta Express  
Roadlines Pvt. Ltd. &  
Anr.

Respondents

O R D E R

This appeal, by special leave, is directed against  
order dated 17th August, 2001 passed by the National  
Consumer Disputes Redressal Commission, New Delhi (for  
short "the National Commission") in First Appeal No.454  
of 1996. By the impugned order, the National  
Commission has allowed the appeal filed by Calcutta  
Express Roadlines Pvt. Ltd. -Respondent No.1 in this  
Appeal, against the order passed by the Maharashtra  
State Consumer Disputes Redressal Commission, inter-  
alia, directing respondent No.1 to pay compensation for  
non-delivery of the consignment to the Insurer.  
Following the ratio of the decision of this Court in  
Oberai Forwarding Agency Vs. New India Assurance Co.  
Ltd. & Anr.1, the National Commission has come to the

conclusion that the complaint filed by the Insurer, as

1 (2000) 2 SCC 407

co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills

(P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the

1 JT 2010 (2) SC 271  
Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

The Oriental  
Insurance Company  
Ltd. & Anr.

Appellants

VERSUS

M/s Associated Bulk  
Movers

Respondent

ORDER

This appeal, by special leave, is directed against the order dated 2nd August, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.42 of 1999.

By the impugned order, the National Commission has allowed the appeal filed by Associated Bulk Movers -Respondent in this Appeal, against the order passed by the Maharashtra State Consumer Disputes Redressal Commission, inter-alia, directing respondent to pay compensation to the complainants for non-delivery of the consignment. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where

there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation

1 (2000) 2 SCC 407

Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.<sup>1</sup>, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the

order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

1 JT 2010 (2) SC 271

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1826 OF 2010

The Oriental  
Insurance Co. Ltd. &  
Anr.

Appellants

VERSUS

Gulab Road Lines &  
Anr.

Respondents

ORDER

This appeal, by special leave, is directed against the order dated 5th January, 2007 passed by the National Consumer Disputes Redressal Commission, New

Delhi (for short "the National Commission") in First Appeal No.314 of 1999.

By the impugned order, the National Commission has allowed the appeal filed by M/s Gulab Road Lines - Respondent No.1 in this Appeal, against the order passed by the Consumer Disputes Redressal Commission, Union Territory, Chandigarh, inter-alia, directing respondent No.1 to pay compensation for non-delivery of the consignment to the Insurer. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. T

the court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to

maintain a complaint under the Consumer Protection Act,  
1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No.  
5611 of 1999 "M/s Economic Transport Organisation

1 (2000) 2 SCC 407

Through its Manager Vs. M/s Charan Spinning Mills (P)  
Ltd. & Anr.) came up for hearing before a bench of two  
Judges, the bench was of the view that the decision in  
Oberai Forwarding Agency (supra) required  
reconsideration. When the matter was placed before a  
three-Judge Bench, it referred the case to a  
Constitution Bench. The Constitution Bench, vide its  
judgment dated 17th February, 2010, reported as Economic  
Transport Organisation Vs. M/s Charan Spinning Mills  
(P) Ltd. & Anr.<sup>1</sup>, on examination of the entire issue,  
has opined that the decision of this Court in Oberai  
Forwarding Agency (supra) is not good law in so far as  
it construes a letter of subrogation-cum-assignment, as  
a pure and simple assignment. But to the extent it  
holds that an insurer alone cannot file a complaint  
under the Act, the decision is correct.

Learned counsel for the parties submit that in  
view of the opinion rendered by the Constitution Bench  
in Economic Transport Organisation's case (supra), the  
order passed by the National Commission, dismissing the  
complaint as not maintainable, cannot be sustained and  
the matter deserves to be remitted back to the National  
Commission for fresh consideration in the light of the  
said decision.

1 JT 2010 (2) SC 271

Having examined the order passed by the National  
Commission in the light of the decision of the

Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1827 OF 2010

The Oriental  
Insurance Co. Ltd. &  
Anr.

Appellants

VERSUS

M/s Amritsar  
Transport Co. Ltd.

Respondent

ORDER

This appeal, by special leave, is directed against the order dated 4th August, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.383 of 1998.

By the impugned order, the National Commission has allowed the appeal filed by M/s Amritsar Transport Co. Ltd. -Respondent in this Appeal, against the order passed by the Maharashtra State Consumer Disputes

Redressal Commission, inter-alia, directing respondent to pay compensation for non-delivery of the consignment to the complainant. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.<sup>1</sup>, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

<sup>1</sup> JT 2010 (2) SC 271

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1922 OF 2008

M/s Eicher Tractors  
Ltd.

Appellant

VERSUS

M/s Savani Transport  
Ltd.

Respondent

ORDER

This appeal, by special leave, is directed against the order dated 19th November, 2007 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in Revision Petition No.2208 of 2005.

By the impugned order, the National Commission has allowed the Revision Petition filed by M/s Savani Transport Ltd. -Respondent in this Appeal, against the order passed by the State Commission, Delhi, inter-alia, directing respondent to pay compensation for non-delivery of the consignment to the Insurer. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has come to the

1 (2000) 2 SCC 407  
conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.") came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench

in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission

1 JT 2010 (2) SC 271  
for fresh consideration and disposal of the Revision  
Petition in accordance with law. There will, however,  
be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3633 OF 2002

M/s Glaxo India Ltd.  
& Anr.

Appellants

VERSUS

Economic Transport  
Organisation

Respondent

ORDER

This appeal is directed against the order dated 1st  
April, 2002 passed by the National Consumer Disputes  
Redressal Commission, New Delhi (for short "t  
National Commission") in Original Petition No.392 of

he

2000. By the impugned order, following the ratio of the decision of this Court in Oberai Forwarding Agency Vs.

New India Assurance Co. Ltd. & Anr.1, the National

Commission has come to the conclusion that

complaint filed by the Insurer, as co-complainant with

the assured, was not maintainable, resulting

dismissal of the complaint, without any adjudication on

the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three

Judges, drawing a distinction between 'assignment' and

'subrogation' had held that where there is

(2000) 2 SCC 407 subrogation simpliciter in favour of the insurer on

account of payment of the loss and settlement of the

claim of the assured, the insurer could maintain an

action in the consumer forum in the name of the

assured but where there is an assignment of the rights

of the assured in favour of the insurer, the insurer as

assignee cannot file a complaint under the Act, as it

was not a 'consumer' under the Act. The court went on

to hold that even if the assured was a co-complainant,

it would not enable the insurer to maintain a complaint

under the Consumer Protection Act, 1986 (for short "the

Act").

However, when a connected appeal (Civil Appeal

No. 5611 of 1999 "M/s Economic Transport Organisation

Through its Manager Vs. M/s Charan Spinning Mills (P)

Ltd. & Anr.) came up for hearing before a bench of two

Judges, the bench was of the view that the decision in

Oberai Forwarding Agency (supra) required

reconsideration. When the matter was placed before a

three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai

Forwarding Agency (supra) is not good law in so far as  
1 JT 2010 (2) SC 271  
it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4062 OF 2006

The New India  
Assurance Co. Ltd. &  
Anr.

Appellants

VERSUS

M/s Nanaksar Road  
Carriers

Respondent

ORDER

This appeal is directed against the order dated 22nd March, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in Original Petition No.150 of 1998.

By the impugned order, the National Commission has dismissed the petition filed by the appellant. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.<sup>1</sup>, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

<sup>1</sup> (2000) 2 SCC 407  
We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer,

the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.") came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and

1 JT 2010 (2) SC 271  
the matter is remanded back to the National Commission for fresh consideration and disposal of the Original Petition in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4509 OF 2006

Green Roadways  
(Regd.)

Appellant

VERSUS

United India  
Insurance Co. Ltd. &  
Anr

Respondents

ORDER

We do not find illegality in the impugned order. The appeal is dismissed accordingly. It goes without saying that in the remand proceedings, the State Commission shall take into consideration the decision of the Constitution Bench in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, in regard to the question of the subrogation/assignment.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

1 (2000) 2 SCC 407  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.6689 OF 2002

National Insurance Co. Ltd. & Anr. Appellants

VERSUS

Network Transportation Respondent

ORDER

This appeal, by special leave, is directed against the order dated 27th February, 2002 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.424 of 1997.

By the impugned order, the National Commission has allowed the appeal filed by Network Transportation - respondent in this Appeal against the order passed by the Consumer Disputes Redressal Commission (State Commission, Consumer Protection), Rajasthan, Jaipur directing respondent to pay compensation to the complainants. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.") came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.2, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in

Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.7086 OF 2002

Delton Cables Ltd.  
& Anr.

Appellants

VERSUS

Bombay General  
Freight Carriers  
Ltd.

Respondent

ORDER

This appeal is directed against the order dated 16th August, 2002 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in Original Petition No.60 of 1996.

By the impugned order, the National Commission has dismissed the petition filed by Delton Cables Ltd. - Appellant in this Appeal, following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.1.

We have heard learned counsel for the parties.

1 (2000) 2 SCC 407

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a

Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Cha

ran Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission

1 JT 2010 (2) SC 271  
for fresh consideration and disposal of the Original  
Petition in accordance with law. There will, however,  
be no order as to costs.

.....J.

[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7874 OF 2002

United India  
Insurance Co. Ltd.

Appellant

VERSUS

Cargo Carriers  
(India) Regd. & Anr.

Respondents

ORDER

This appeal, by special leave, is directed against the order dated 25th July, 2001 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in First Appeal No.229 of 1998.

By the impugned order, the National Commission has allowed the appeal filed by Cargo Carriers (India) Regd. -Respondent No.1 in this Appeal, against the order passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh. Following the ratio of the decision of this Court in Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. & Anr.<sup>1</sup>, the National Commission has come to the conclusion that the complaint filed by the Insurer, as co-complainant with

<sup>1</sup> (2000) 2 SCC 407  
the assured was not maintainable, resulting in dismissal of the complaint, without any adjudication on the merits of the complaint.

We have heard learned counsel for the parties.

In Oberai Forwarding Agency (supra), a bench of three Judges, drawing a distinction between 'assignment' and 'subrogation' had held that where there is a subrogation simpliciter in favour of the insurer on account of payment of the loss and settlement of the claim of the assured, the insurer could maintain an action in the consumer forum in the name of the assured but where there is an assignment of the rights of the assured in favour of the insurer, the insurer as assignee cannot file a complaint under the Act, as it was not a 'consumer' under the Act. The court went on to hold that even if the assured was a co-complainant, it would not enable the insurer to maintain a complaint under the Consumer Protection Act, 1986 (for short "the Act").

However, when a connected appeal (Civil Appeal No. 5611 of 1999 "M/s Economic Transport Organisation Through its Manager Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.) came up for hearing before a bench of two Judges, the bench was of the view that the decision in Oberai Forwarding Agency (supra) required reconsideration. When the matter was placed before a three-Judge Bench, it referred the case to a Constitution Bench. The Constitution Bench, vide its judgment dated 17th February, 2010, reported as Economic Transport Organisation Vs. M/s Charan Spinning Mills (P) Ltd. & Anr.1, on examination of the entire issue, has opined that the decision of this Court in Oberai Forwarding Agency (supra) is not good law in so far as it construes a letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.

Learned counsel for the parties submit that in view of the opinion rendered by the Constitution Bench in Economic Transport Organisation's case (supra), the order passed by the National Commission, dismissing the complaint as not maintainable, cannot be sustained and the matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision.

1 JT 2010 (2) SC 271

Having examined the order passed by the National Commission in the light of the decision of the Constitution Bench, we find force in the submission of learned counsel for the parties. Consequently, the appeal is allowed; the impugned order is set aside and the matter is remanded back to the National Commission for fresh consideration and disposal of the appeal in accordance with law. There will, however, be no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
MARCH 23, 2010.